

111203

1/44 U.S.P.T.O.

UTILITY PATENT APPLICATION TRANSMITTAL

(New Nonprovisional Applications Under 37 CFR § 1.53(b))

Attorney Docket No.

ALA-007B

10/706398
U.S.P.T.O.
17548

111203

TO THE COMMISSIONER FOR PATENTS:

Transmitted herewith is a patent application identified as follows:

First-named inventor: Peter K. Craft

Assignee: Alacritech, Inc.

Title: "PROTOCOL PROCESSING STACK FOR USE WITH INTELLIGENT NETWORK INTERFACE DEVICE"

 Original Patent Application. Continuing Application (prior application not abandoned) of:

Prior Application: 10/208,093

Examiner: Zarni Maung

Group Art Unit: 2154

- The specification contains a statement claiming priority under 35 USC § 120 and claiming the benefit under 35 U.S.C. §119.
- The entire disclosure of each of the prior applications (10/208,093, 09/514,425, 09/141,713, 09/067,544, 09/384,792, 09/464,283, 09/439,603) is considered as being part of the disclosure of the accompanying application and is hereby incorporated by reference therein.
- The entire disclosure of each of the prior provisional applications (60/061,809 and 60/098,296) is considered as being part of the disclosure of the accompanying application and is hereby incorporated by reference therein.

Enclosed are:

20	pages Specification	X	A check for filing fee (\$770.00)
6	pages <u>Paper Appendix A</u>	X	Return Receipt Postcard
4	pages Claims	2	pages Transmittal letter (in duplicate)
1	page Abstract	1	page CD Appendix Transmittal Letter
4	pages Drawings (FORMAL)	X	Compact Disc Appendix (2 copies)
3	pages Declaration/POA (copy from parent appl)		

CLAIMS AS FILED				
FOR	NO. FILED	NO. EXTRA	RATE	FEE
Total Claims	20	0	\$18.00	\$ 0.00
Independent Claims	2	.0	\$86.00	\$ 0.00
Multiple Dependent Claims (if applicable)				\$0.00
Assignment Recording Fee				\$0.00
Basic Filing Fee				\$770.00
			Total Filing Fee	\$770.00

CONTINUITY INFORMATION ON FIRST PAGE OF APPLICATION:

Applicants have provided the Cross Reference to Related Applications section in an attempt to comply with the new Patent Office requirements for indicating specified relationships between applications to claim the benefit of prior applications under 35 USC §120. Unfortunately, those new Patent Office requirements are vague and confusing, and contradict historic understanding as well as current and former laws and Patent Office rules. As such, applicants are unsure of how to characterize the various applications, and have provided the Cross Reference to Related Applications section to appease the Patent Office but cannot provide any assurance as to which of several unclear and contradictory relationship definitions the applications may assume.

For example, MPEP §201.07 (R1, Feb. 2003) states: "A continuation is a second application for the same invention claimed in a prior nonprovisional application and filed before the original prior application becomes abandoned or patented." However, MPEP §804, listing the requirements of double patenting rejections (including provisional rejections), states: "Where the claims of an application are substantively the same as those of a first patent, they are barred under 35 U.S.C. 101 - the statutory basis for a double patenting rejection. A rejection based on double patenting of the 'same invention' type finds its support in the language of 35 U.S.C. 101." Thus, according to the definition of continuation application provided by MPEP §201.07, no valid continuation of a patent can exist, in contrast to long-standing patent practice and many thousands of issued patents.

According to MPEP §201.08 (R1, Feb. 2003): "A continuation-in-part is an application filed during the lifetime of an earlier nonprovisional application, repeating some substantial portion or all of the earlier nonprovisional application and

adding matter not disclosed in the said earlier nonprovisional application." This is in contrast to the Notice in the March 18, 2003 Official Gazette of the USPTO, which states: "the designation of an application as a continuation (rather than as a continuation-in-part) is an indication that the entire invention claimed in an application has support in the prior application, whereas the designation of an application as a continuation-in-part is an indication that the claimed invention is not entirely supported by the prior application." In other words, to define a CIP the MPEP looks to whether an application has added subject matter, whereas the Official Gazette Notice directs applicants to determine whether the claimed invention is entirely supported by the prior application, without regard to whether subject matter has been added.

Neither 35 U.S.C §120 nor 37 CFR §1.78 requires the characterization of an application as a continuation versus a divisional versus a continuation-in-part. Perhaps for this reason, the MPEP in effect a few months ago made it clear that the terms "continuation," "CIP," "divisional," etc. had no legal significance. As stated in MPEP Edition 8, §201.11: "Continuing applications include those applications which are called divisions, continuations, and continuations-in-part. As far as the right under the statute is concerned the name used is immaterial, the names being merely expressions developed for convenience. The statute is so worded that the first application may contain more than the second, or the second application may contain more than the first, and in either case the second application is entitled to the benefit of the filing date of the first as to the common subject matter."

Given the vague, confusing and contradictory meanings proposed by the Patent Office, applicants are unsure what a "continuation application" is, what a "continuation-in-part application" is and what a "divisional application" is. Therefore, the terms "continuation application" and "continuation-in-part application" should not be relied upon by an Examiner or anyone else for its required characterization of various applications by vague and contradictory names.

I hereby certify that this is being deposited with the U.S. Postal Service "Express Mail Post Office to Addressee" service under 37 CFR § 1.10 on the date indicated below and is addressed to:

Mail Stop Patent Application
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By: Lester Wallace

Typed Name: T. Lester Wallace

Express Mail Label No.: ER452602364US

Date of Deposit: November 12, 2003

Respectfully submitted,

By: Lester Wallace

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Date: Nov. 12, 2003

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COMPACT DISC TRANSMITTAL LETTER

(under 37 CFR 1.52(e)3(ii))

Title: "Protocol Processing Stack For Use With Intelligent Network Interface Device"

Assignee: Alacritech, Inc.

Inventors: Craft, et al.

Serial No.:

Filing Date: November 12, 2003

Atty Docket: ALA-007B

TO THE ASSISTANT COMMISSIONER FOR PATENTS:

Sir:

Transmitted herewith are:

Two Labeled Compact Discs – Recordable (CD-R) – "Copy 1" and "Copy 2",
each in a CD case and contained in a padded envelope.

The content on the two discs is identical.

The machine format is: IBM-PC

The operating system is: MS-Windows

The creation date of the CDs is: November 10, 2003

The name, date and size of the files on the CDs are listed below:

There are three folders on each disc: 1) CD Appendix A, 2) CD Appendix B, and 3) CD Appendix C.

Folder Appendix A contains two files:

CD Appendix A Title Page.txt. Its size is 329 bytes. It was created 11/10/03.

Rcv.v. Its size is 84.4KB. It was created 1/7/99.

Folder Appendix B contains two files:

CD Appendix B Title Page.txt. Its size is 446 bytes. It was created 11/10/03.

Microcode.txt. Its size is 105 KB. It was created 7/29/02.

Folder Appendix C contains three files:

CD Appendix C Title Page.txt. Its size is 365 bytes. It was created 11/10/03.

atcpsource.wrd.txt. Its size is 778 KB. It was created 7/29/02.

simbasource.wrd.txt. Its size is 262 KB. It was created 7/29/02.

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with the United States Postal Service as "Express Mail Post
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Application, Commissioner for Patents, P.O. Box 1450,
Alexandria VA 22313, on November 12, 2003, as

Express Mail No. ER452602364US.

T. Lester Wallace

LesterWallace
Signature

Nov.12,2003
Date of Signature

Respectfully submitted,

LesterWallace

T. Lester Wallace
Attorney for Applicants
Reg. No. 34,748